

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JESSE WAYNE FALLIN, JR.,

Plaintiff,

v.

UNITED STATES, et al.,

Defendants.

Case No. 3:23-cv-00512-ART-CLB
ORDER ON MOTIONS IN LIMINE

This case concerns medical treatment for injuries suffered by Plaintiff Jesse Wayne Fallin, Jr., after a postal van hit his vehicle. Plaintiff and Defendant submitted motions in limine. The Court also held a calendar call in which each party discussed their positions on their motions and responses. (See ECF No. 35.)

I. BACKGROUND

Plaintiff Jesse Wayne Fallin, Jr., was hit by a postal van while driving in Fernley, Nevada, in 2021. (ECF No. 1.) Defendant argues that Plaintiff's injuries were not severe enough to justify the medical care that he received. (ECF No. 31 at 2.) Both sides expect the trial to focus on the severity of Plaintiff's injuries from the crash and whether medical treatment he received was necessary and reasonable. The motions in limine focus entirely on these questions. The Court addresses Plaintiff's motion then Defendant's.

II. DISCUSSION

A. Plaintiff's Motion in Limine

Plaintiff's omnibus motion includes five motions in limine. (ECF No. 28.) Plaintiff seeks to preclude Defendant from questioning Plaintiff's treatment providers about medical liens except as a source of those providers' bias in having

1 a financial interest in the outcome of the case. Plaintiff further seeks to preclude
2 argument that Plaintiff's counsel referred or recommended treatment to Plaintiff,
3 arguments about unreasonable billing practices employed by Plaintiff's treatment
4 providers, and arguments that this is a "medical buildup" case. Plaintiff also
5 seeks to prevent Defendant's medical expert from expressing conclusions about
6 the car crash that caused Plaintiff's injuries.

7 **1. Medical Liens**

8 Plaintiff requests that the Court allow Defendant to put on evidence of
9 medical liens held by some of Plaintiff's treating physicians only as a possible
10 source of bias for those treating physicians. (ECF No. 28 at 4–5.) Plaintiff seeks
11 to restrict Defendant from implying that Plaintiff could negotiate a lower price for
12 those bills or that Plaintiff's other insurance coverage may cover the bills, as such
13 inferences would violate the collateral source rule. (*Id.* at 5 (citing *Russo v. Matson*
14 *Nav. Co.*, 486 F.2d 1018, 1020 (9th Cir. 1973).) Defendant states that it plans to
15 ask about medical liens only to show possible bias of treating-physician
16 witnesses. (ECF No. 31 at 4–5.) At the calendar call, both parties agreed that
17 Defendant may ask medical providers about Plaintiff's unpaid bills as a way to
18 show those providers' interest in the outcome of the case, and Defendant stated
19 that it did not expect to ask questions beyond that. (ECF No. 35.) The Court
20 accordingly grants Plaintiff's motion and notes that Defendant may use Plaintiff's
21 medical liens to attack credibility or show bias based on those witnesses' financial
22 interest in the outcome of the case and not to suggest that Plaintiff could
23 negotiate down his medical bills.

24 **2. Plaintiff Referrals of Medical Providers**

25 Plaintiff seeks to exclude evidence, argument, and inferences that Plaintiff's
26 counsel referred or recommended treatment to Plaintiff. (ECF No. 28 at 5–6.)
27 Plaintiff argues that seeking communications between Plaintiff and Plaintiff's
28 counsel would violate the attorney-client privilege. Plaintiff concedes that

1 Defendant may ask about when Plaintiff retained counsel, but not about the
2 substance of communications between Plaintiff and his counsel. (*Id.* at 6 (citing
3 *Calvert v. Ellis, et al.*, No. 2:13-CV-00464-APG-NJK, 2016 WL 153044, at *4 (D.
4 Nev. Jan. 12, 2016).) Defendant responds that questions about when and why
5 Plaintiff retained counsel are not barred by the attorney-client privilege. See
6 *Roberts v. Smith's Food & Drug Centers, Inc.*, No. 2:11-CV-1917-JCM-GWF, 2014
7 WL 12802901, at *4 (D. Nev. May 28, 2014) (permitting inquiry into “when and
8 why plaintiff sought legal representation . . . if [Defendant] can establish the
9 relevance of this evidence at trial”).

10 Defendant argues that Plaintiff may state whether Plaintiff’s counsel
11 referred him to medical providers because that is an underlying fact, not a
12 communication protected by the attorney-client privilege. (ECF No. 31 at 6 (citing
13 *Upjohn v. United States*, 449 U.S. 383, 395–96 (1981) (internal citation omitted)
14 (The answer to the question “[w]hat did you say or write to the attorney” is
15 privileged, while a relevant fact that has been incorporated into a communication
16 to an attorney is not.)) The Court holds that Defendant may ask Plaintiff or other
17 witnesses with personal knowledge whether a treatment-provider was referred to
18 Plaintiff by counsel, but Defendant may not seek to produce details about
19 Plaintiff’s confidential communications with counsel. Accordingly, the Court
20 denies Plaintiff’s motion while reminding Defendant to not seek or place into
21 evidence privileged communications between Plaintiff and Plaintiff’s counsel.

22 **3. Unreasonable Billing Practices**

23 Plaintiff seeks to limit Defendant from arguing or opining about Plaintiff’s
24 providers’ billing practices being unreasonable. (ECF No. 28 at 6–7.) Plaintiff
25 argues that Defendant did not provide an expert to establish that Plaintiff’s
26 providers’ billing was unreasonable. (*Id.*) Defendant points to reports and
27 testimony from defense experts in which those experts say that procedures were
28 unnecessary, arguing that unnecessary medical treatment is by definition

1 unreasonable. (ECF No. 31 at 8–9.) Defendant also points to its retained economic
2 expert, which Plaintiff’s motion does not mention. (*Id.* at 8.) Defendant concedes
3 that their experts’ testimony is limited to their expertise, and the Court may
4 address any related objections during trial. (*Id.*) Accordingly, the Court denies
5 Plaintiff’s third motion.

6 **4. Evidence Showing Medical Build Up**

7 Plaintiff seeks to preclude Defendant from arguing, absent evidence, that
8 this case involves attorney-driven litigation or “medical buildup” because no
9 evidence exists to suggest this. (ECF No. 28 at 7.) Defendant responds that it has
10 probative evidence suggesting medical buildup.

11 Other courts in this district have held that a defendant may argue that a
12 plaintiff’s medical treatment is attorney driven as long as admissible evidence
13 exists to show it. *See Roberts*, 2014 WL 12802901 at *4; *Peterson v. Evergreen*
14 *Trans, Inc.*, No. 3:19-CV-00442-ART-WGC, 2023 WL 1965691, at *3 (D. Nev. Feb.
15 13, 2023).

16 Defendant’s evidence of medical buildup consists of the following: a
17 declaration from Plaintiff’s orthopedic expert that many surgeons would not
18 provide Plaintiff with some of the back procedures he received based on his
19 diagnoses, statements from the Plaintiff that he went to certain providers at the
20 advice of his attorneys, and medical records from Plaintiff’s charts that record
21 Plaintiff’s counsel calling providers to ask, “what is going to be done next.” (ECF
22 No. 31 at 10.) At the calendar call, Plaintiff’s counsel conceded that Defendant
23 may make medical-buildup arguments based on these facts. Accordingly, the
24 Court denies Plaintiff’s motion but reminds Defendant that the Court may
25 entertain and grant specific objections relating to these topics during trial.

26 **5. Appropriateness of Surgical Procedures**

27 Plaintiff seeks to preclude Defendant’s expert witness Dr. Chavez from
28 testifying outside the scope of his expertise. (ECF No. 28 at 8.) Plaintiff points out

1 that Dr. Chavez is a specialist in family medicine, pain management, and
2 addiction. (*Id.*) Plaintiff further points out that Dr. Chavez's expert report reaches
3 conclusions about the severity of the car accident that caused Plaintiff's injuries,
4 the directness of the collision, the mechanics of airbag deployment in Plaintiff's
5 vehicle, and injuries to other passengers in the vehicle. (*Id.*) Plaintiff seeks to
6 exclude all opinions in this report besides Section VII, which discusses pain
7 management medicine and the use of templates by Plaintiff's treatment providers
8 for pain management, as outside the scope of Dr. Chavez's expertise. (*Id.*)

9 At the calendar call, Defendant conceded that Dr. Chavez will not testify
10 about biomechanical issues, airbag deployment, or other technical matters
11 relating to the extent of injuries received in the accident. (ECF No. 35.) Defendant
12 stated that instead Dr. Chavez would testify to pain management, addiction as it
13 relates to pain management, and whether certain surgeries may cause or alleviate
14 pain. (*Id.*) Accordingly, the Court grants Plaintiff's motion and bars Dr. Chavez
15 from testifying as to his conclusions regarding the nature of the automobile
16 accident but permits him to testify regarding medical treatment related to pain
17 management.

18 **6. Cumulative Testimony**

19 Plaintiff seeks to preclude Defendant's two medical experts from providing
20 cumulative testimony. (ECF No. 28.) At the calendar call, both parties agreed that
21 they would avoid providing cumulative testimony and acknowledged that
22 attempts to elicit cumulative testimony would be objected to and disposed of
23 during trial. (ECF No. 35.) Accordingly, the Court grants this motion.

24 **B. Defendant's Motion in Limine**

25 Defendant seeks to preclude Plaintiff's treating doctors from testifying on
26 issues outside of the treatment that they provided to Plaintiff. (ECF No. 29 at 7.)
27 Plaintiff responded and stated at the calendar call that he does not expect to seek
28 testimony from these treatment providers outside of the treatment that they

1 provided to Plaintiff and that these witnesses will basically serve as percipient
2 witnesses. (ECF No. 30 at 3–5; ECF No. 35.) Accordingly, the Court grants
3 Defendant’s motion.

4 **IV. Conclusion**

5 Accordingly, the Court grants Plaintiff’s first, fifth, and sixth motions as
6 part of their omnibus motion in limine and denies all others.

7 The Court grants Defendant’s motion in limine as explained in the order
8 above.

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10 DATED THIS 7th day of April, 2025.

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13 ANNE R. TRAUM
14 UNITED STATES DISTRICT JUDGE
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